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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LEODEGARIO ARROYO PENALOZA,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-70379

Agency No. A96-066-305

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 18, 2008^{**}

Before: CANBY, T.G. NELSON, and BEA, Circuit Judges.

Leodegario Arroyo Penaloza, a native and citizen of Mexico, petitions pro se for review of a decision of the Board of Immigration Appeals (“BIA”) denying his second motion to reopen. Because Penaloza’s second motion to reopen did not

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

include new facts to be proven at the reopened hearing and was not supported by affidavits or other documentary evidence, the BIA did not abuse its discretion in construing the motion as one to reconsider and denying the motion as untimely. *See* 8 C.F.R. §§ 1003.2(c)(1) & 1003.2(b)(2).

We lack jurisdiction to review the BIA's February 13, 2006, order which affirmed the IJ's denial of Penaloza's application for cancellation of removal, because this petition is not timely as to that order. *See* 8 U.S.C. § 1252(b)(1); *see also Singh v. INS*, 315 F.3d 1186, 1188 (9th Cir. 2003).

PETITION FOR REVIEW DENIED IN PART; DISMISSED IN PART.